REMARKS

Claims 1 to 24 remain in the case, of which claims 18-24 have been withdrawn from consideration.

Claim 18 has been amended in view of the Office Action and to better define what the Applicants consider their invention, as fully supported by an enabling disclosure. More specifically, amended method claim 18 incorporates all the limitations of product claim 1.

Reconsideration in view of the following remarks and entry of the foregoing amendments are respectfully requested.

ELECTION/RESTRICTIONS

In response to the Office Action dated December 19, 2006, Applicants note that method claims 18-24 were withdrawn from consideration by the Examiner, and thus that the Examiner has elected claims 1, 5-12 and 13-17, drawn to a gel matrix for topical use on a subject having an epithelial surface to be immersed in water, for prosecution in the subject application.

Applicants also note the opportunity of rejoinder for method claims 18-24 if such claims incorporate all the limitations of an allowable product claim.

Accordingly, claim 18 has been amended to incorporate all limitations of claim 1.

OBJECTIONS TO THE SPECIFICATION, CLAIM REJECTIONS UNDER 35 USC § 112, AND § 102

Applicants acknowledge that these objections and rejections were withdrawn.

CLAIM REJECTION UNDER 35 U.S.C. § 103(a)

Claim 1 remains rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,074,438 to Lim *et al.* Claim 15 is now included in this rejection.

Applicants disagree.

In order to maintain the present obviousness rejection, there must be a showing that Lim et al. disclose or suggest each and every feature of the claimed gel matrix. In essence, the question is whether differences between the prior art and Applicant's invention, namely, at least, the amount of about 15% of Aculyn-44 in the composition, and its viscosity, before application, of about 35-55 centipoises, are such that applicant's invention as a whole would have been obvious. See *In re Wright*, 848 F.2d 1216 (Fed. Cir. 1988) ("[I]t is the invention as a whole that must be considered in obviousness determinations. The invention as a whole embraces the structure, its properties, and the problem it solves.") The cited Lim et al. reference clearly fails in this respect.

More specifically, Applicants respectfully disagree with the Examiner's statement according to which "Lim's recitation of "about 10% of Aculyn-44" reads on or at least is suggestive of instantly claimed "about 15" " (Action page 4). Indeed, Aculyn-44 in Lim et al. is present in the compositions "at about 0.1% to about 10%, preferably, about 0.5% to about 5%" (column 8, lines 35-37). Thus, the disclosed ranges clearly do not disclose "about 15%". In addition, Applicants respectfully submit that Lim et al. themselves do not consider that 10% is a percentage equivalent to that of 15%, despite the use of the term "about". This is evidenced, for example, in column 8, lines 61-62 of Lim et al., where it is stated that "anionic surfactants are generally present in the compositions [...] at about 0.1% to about 15%, preferably, about 0.5% to about 10%".

Moreover, in the previous Office Action, dated July 13, 2006, the Examiner acknowledged that Lim et al. does not explicitly teach a composition containing Aculyn-44.

Thus, Lim et al. clearly do not teach or even suggest a composition comprising "about 15%" or "15%" Aculyn-44, as defined in instant claims 1 and 15, respectively.

In addition, there is to Applicant's knowledge absolutely no mention, in Lim et al., of the viscosity, before application, of the compositions disclosed. More specifically, Lim *et al.* merely mention that hair dyeing compositions may be in two parts, namely a hair dyeing formulation containing the oxidation dye precursors and a developer formulation comprising a

suitable oxidizing agent, such as hydrogen peroxide, that the two formulations are mixed immediately prior to application to the hair to form a *thickened* liquid solution (Lim *et al.*, column 1, lines 23-33, prior art section), which seems to be the case in the compositions exemplified in the same document (Lim *et al.*, column 10, line 65 to column 11, line 2). Lim *et al.* further note that the compositions obtained by the mixture with an oxidant "form a stable formulation with enough consistency and body to remain on the hair without dripping or running during the complete coloring period" (Lim *et al.*, column 10, lines 28-35). Thus Applicant submits that there is no teaching of the viscosity, before application, of the hair dyeing preparations disclosed in Lim et al. The only indication is that, when mixed with the oxidant just before application, the mixture may get thicker, and that when applied on the hair (i.e. after application), it should not drip or run.

Thus, Lim et al. clearly do not teach or suggest a gel matrix having a viscosity, before application, of about 35-55 centipoises, as defined in instant claims 1 and 15. Moreover, the instantly claimed gel matrix, as such, has this given viscosity range of about 35-55 centipoises; it does not need to be mixed an oxidant or another preparation to reach such viscosity.

In view of the foregoing, reconsideration and withdrawal of the present obviousness rejection is respectfully requested.

The Examiner has rejected claims 5-10 and 12-13 under 35 USC 103(a) as being unpatentable over US 6,074,438 to Lim in view of US 6,447,788 to Strathausen.

Applicant disagrees.

Claims 5-10 and 12-13 are ultimately dependent on claim 1. Applicants first respectfully submit that the above arguments with regard to Lim et al. not disclosing or suggesting at least the claimed features according to which "about 15%" Aculyn-44 and "a viscosity, before application, of about 35-55 centipoises" equally apply here.

In addition, Applicants note that the Examiner has acknowledged that Lim et al. do not teach the medicaments of instant claims (Action page 4).

Applicants respectfully submit that, should a person of skill in the art combine the teachings by Lim et al. with those by Strathausen, he or she would clearly not have arrived to the gel matrix as defined in instant claims 5-10 and 12-13. At most, such combination would, provided potential galenic obstacles, if any, could be overcome, add a substantial amount of honey and pure essential oils to the hair dyeing compositions taught by Lim et al. In any case, Applicants respectfully submit that the combination does not teach or suggest each and every feature of instant dependent claims 5-10 and 12-13. Applicants respectfully submit that the same reasoning applies to dependent claim 14 with regard to the presence of an antioxidant, although such claim was not mentioned in the Examiner's rejection.

In view of the above, reconsideration and withdrawal of the present obviousness rejection is respectfully requested.

The Examiner has rejected claim 16 (Applicants assumed that "claim 17" was a clerical error in this rejection) under 35 USC 103(a) as being unpatentable over US 6,074,438 to Lim in view of US 6,447,788 to Strathausen and US 5,573,756 to Lambrechts.

Applicant disagrees.

Claim 16 is dependent on claim 15. Applicants first respectfully submit that the above arguments with regard to Lim et al. not disclosing or suggesting at least the claimed features according to which "about 15%" Aculyn-44 and "a viscosity, before application, of about 35-55 centipoises" equally apply here.

Similarly as above, Applicants submit that the combination of the teachings of these three documents by a person of ordinary skill in the art would at most add a few elements, such as polyethylene glycol, to the honey- and pure essential oil-containing hair dyeing composition mentioned above. In any case, Applicants respectfully submit that the combination of the teachings by the three cited documents does not teach or suggest each and every feature of the gel matrix as defined in instant claim 16.

Conclusion

In view of the foregoing, reconsideration and withdrawal of the present obviousness rejection is respectfully requested.

The rejections of the original claims are believed to have been overcome by the present remarks and the introduction of new claims. From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such an action is earnestly solicited.

Respectfully submitted,
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